

STATE OF MAINE

v.

ABERNATHY MILLER

Submitted on Briefs April 18, 2002  
Decided May 7, 2002

Panel: SAUFLEY, C.J., and RUDMAN, DANA, ALEXANDER, CALKINS,  
and LEVY, JJ.

MEMORANDUM OF DECISION

Abernathy Miller appeals from the judgment of conviction entered in the Superior Court (Penobscot County, *Mead, J.*) on a jury's verdict finding him guilty of one count of robbery (Class A), 17-A M.R.S.A. § 651 (1983 & Supp. 2001), and one count of theft (Class C), 17-A M.R.S.A. § 353 (1983). Contrary to Miller's contention, the trial court did not exceed the bounds of its discretion, pursuant to M.R. Evid. 403, by finding that the probative value of testimony relating to a knit hat was not substantially outweighed by the danger of unfair prejudice. *See State v. Pierce*, 2001 ME 14, ¶ 28, 770 A.2d 630, 637-38; M.R. Evid. 403. Nor did the court clearly err by finding that the photo array shown to an eyewitness was not unduly suggestive of the defendant. *See State v. Kelly*, 2000 ME 107, ¶ 20, 752 A.2d 188, 192.

The entry is:

Judgment affirmed.

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